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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1964

NO.

SGT. JESSE E. SNAPP,
Petitioner

vs.

HONORABLE W. D. NEAL, State Auditor, and
HONORABLE JOE T. PATTERSON, Attorney General,
both of the State of Mississippi,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

Petitioner, Sgt. Jesse E. Snapp, an airman on active duty with the USAF, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Mississippi entered in the above entitled case upholding the judgment of the trial court in favor of respondents and dismissing petitioner's application for an appeal and review.

CITATION OF OPINIONS BELOW

The opinion of the Supreme Court of Mississippi is reported in 164 So.2d 752 and a copy is reproduced herein as Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C., section 1257(3). The opinion and judgment of the Supreme Court of Mississippi was rendered on June 1, 1964. The decision of the Supreme Court of Mississippi is final. On August 28, 1964, Mr. Justice Black extended the time for filing a petition for certiorari to and including September 30, 1964. On October 1, 1964, Mr. Justice Black signed an order further extending the time for filing a petition for writ of certiorari in this matter to and including October 29, 1964.

QUESTIONS PRESENTED

1. Does the Soldiers' & Sailors' Civil Relief Act of 1940 as Amended (50 U.S.C. App. 574) prohibit a state from imposing an ad valorem tax on personal property under the following circumstances:

A member of the Armed Service on active duty in the taxing state, which is not his residence, owns a house trailer located in the taxing state which trailer however, has never moved or used the State highways during the taxable year.

2. Alternatively, is a house trailer a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, under the circumstances stated in paragraph 1 hereof?

3. If a house trailer is a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, then does the proviso of the second paragraph apply when the State of the taxpayer's residence does not

require a payment of a tax of any sort unless the vehicle operates or moves on the highways of that State?

4. Does the decision of the Supreme Court of Mississippi in this case either misconstrue, misinterpret or ignore the basic reasoning of *Dameron v. Brodhead*, 345 U.S. 322 (1953)?

STATUTES INVOLVED

The statutory provisions involved are: the Soldiers' & Sailors' Civil Relief Act of 1940 as amended (50 U.S.C. App. 574); the several Mississippi statutes dealing with ad valorem taxes generally, including ad valorem taxes on motor vehicles and ad valorem taxes on house trailers; and the statutes of South Carolina relative to registration and licensing of motor vehicles and house trailers. The texts of these statutes are to be found in Appendix B, infra.

STATEMENT OF THE CASE

With the exceptions hereinafter noted, petitioner adopts as a fair statement of the facts of the case, the version contained in the opinion of the Supreme Court of Mississippi (see Appendix A) which reads as follows:

> "Since the re-entry of the appellant on October 29, 1951, into the military service, he has been a resident and domiciliary of Pacolet, South Carolina; he is a registered voter there and his relatives are residents of and are domiciled in South Carolina, and he intends to return to South Carolina on completing his military service. On May 16, 1959, the appellant pur-

chased a house trailer in Greenville, Mississippi. This trailer was moved outside of the city of Greenville, Mississippi, and the appellant resided in this trailer until October, 1961. On October 28, 1961, he became an active member of the United States Air Force and was stationed at Crystal Springs, Mississippi. He was assigned as a permanent party, subject to duty elsewhere. His presence in Mississippi is simply in compliance with his military orders. Since before November 1, 1962, he has lived in his house trailer out from Crystal Springs, Mississippi, at the Sojourner Trailer Court, where he was transferred, as stated, from Greenville, by the Transit Homes, Inc. This trailer was moved over the Mississippi highways and the trailer was parked out from Crystal Springs on privately owned property. The trailer is connected with water, sewerage and electricity, which are detachable. It is now resting on concrete blocks but has wheels and it can be moved over the highways but is not self-propelled. This trailer was not registered on November 1, 1962, under the laws of South Carolina or under the laws of any other state, and no taxes have been paid to South Carolina or to any other state for any period beginning on or after November 1, 1962. On December 15, 1962, the Sheriff of Copiah County notified appellant that there had been an assessment and levy of taxes on his house trailer under the House Trailer Ad Valorem Tax Act which were due on or before November 1, 1962, and that the house trailer would

be sold if payment was not made by January 1, 1963. On December 28, 1962, as a result of this notice and under protest, appellant paid the sum of $38.50. On February 4, 1963 an application for a refund of the tax paid and interest was made. On April 5, 1963, the application for the refund of the tax was denied by the attorney general by proper notice, and notice was also given by the state auditor, W. D. Neal, that the application had been denied. On June 26, 1963, petition to review the disallowance of refund was filed in the Chancery Court of Copiah County, Mississippi. On June 28, 1963, the chancellor ordered the state auditor to transmit to the court a certified copy of the record, which was done. On August 13, 1963, after examining the record and hearing oral arguments of counsel, the chancellor entered the final order affirming the action of the attorney general and disapproving appellant's application for refund and entering a judgment against the appellant for costs. It is from this decree and order that this appeal is prosecuted to this Court.

The basic issue presented by this appeal is whether the chancellor erred in holding that the ad valorem taxes imposed on appellant's house trailer were not barred by Section 574 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended. This question necessarily involves other related questions which will be taken up in appropriate order."

Petitioner wishes to clarify the statement made by the Supreme Court of Mississippi to the effect that "on October 28, 1961, he became an active member of the United States Air Force". The record in the Supreme Court of Mississippi shows that petitioner "re-enlisted" for a further term of duty on October 28, 1961 and it is therefore wrong to say that he "became" a member of the Air Force on that date. (See pages 16-17, Record No. 43086, Supreme Court of the State of Mississippi in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.)

Further, petitioner wishes to point out three facts which are omitted in the statement of facts of the Supreme Court of Mississippi quoted above, to wit:

1. On December 28, 1962 when petitioner paid the tax on the house trailer demanded of him, he did so under protest. (See page 26 of Record No. 43086, Supreme Court of the State of Mississippi, in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.)

2. On February 3, 1963 when petitioner filed his application for a refund as required by Mississippi law, he invoked the benefit and protection of the Soldiers' & Sailors' Civil Relief Act of 1940 (see page 16-19 of Record No. 43086, Supreme Court of Mississippi, in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.). Petitioner's application was denied and this was based on an opinion of the attorney General of Mississippi to the effect that petitioner was not entitled to the immunity provided by 50 U.S.C. App. 574.

3. On June 23, 1963 when petitioner filed for an appeal and review in the chancery court of Copiah County, Mississippi, he again invoked the benefit and protection of the Soldiers' & Sailors' Civil Relief Act. (See pages 3-5 of Record No. 43086 of the Supreme Court of the State of Mississippi, in the matter entitled Sgt. Jesse E. Snapp vs. W. D. Neal, State Auditor, et al.) The Chancellor upheld the Attorney General and adopted his opinion.

The federal question relied upon by petitioner from the start was considered and construed by the Supreme Court of Mississippi and the decision of that court is based upon its interpretation of that federal statute. Thus, this is a matter squarely within the provisions of 28 U.S.C. 1257(3) because it is a case in which, at *all stages*, petitioner has asserted and been denied a privilege and immunity granted to him by a federal statute.

REASONS FOR GRANTING THE WRIT

The taxing authorities of the State of Mississippi, the Attorney General of the State of Mississippi, and the Courts of Mississippi, including the Supreme Court of that State, have misinterpreted and misconstrued a federal statute granting a privilege and immunity to petitioner, to wit: the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, (50 U.S.C. App. 574) so that petitioner has been denied the privilege and immunity granted to him by that statute.

Moreover, the public officials and the courts of the State of Mississippi have interpreted and construed that statute in a manner which is contrary to an in-

terpretation of the same statute made by the Supreme Court of the United States in the case of *Dameron vs. Brodhead*, 345 U.S. 322 (1953).

I.

THE TAX IMPOSED BY MISSISSIPPI ON HOUSE TRAILERS IS AN AD VALOREM TAX, PURELY AND SIMPLY AND AS SUCH IS PROHIBITED BY 50 U.S.C. App. 574(1).

Section 574 provides in pertinent part that (1) for the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any state or political subdivision, such person shall not be deemed (a) to have lost a residence or domicile in any state or political subdivision "solely by reason of being absent therefrom in compliance with military or naval orders," or (b) "to have acquired a residence or domicile in * * * any other State * * * or political subdivision * * * while, and solely by reason of being, so absent," and (2) that "For the purposes of taxation in respect of the personal property" of any such person by any state or political subdivision of which such person is not a resident or domiciliary, "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State * * * or political subdivision * * *."

This provision clearly sets forth that, when one in the military service is absent from his state of residence or domicile in compliance with military orders, no state other than the state of his residence or domicile may impose a tax on his personal property or income. The concluding clause—that, "For the purposes of taxation in respect of personal property" of a serviceman, "personal property shall not be deemed to be

located or present in or to have a situs for taxation in such State" (i.e., any state other than the state of the serviceman's residence and domicile)—is alone dispositive of this case.

The problem which gave rise to the policy announced in Section 574 was the possible subjection of military personnel serving in several taxing jurisdictions through no choice of their own to the taxation of their property by several states in the same calendar year. H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2. However, Congress did not limit its policy to situations of *actual* multiple taxation. This problem was considered in *Dameron v. Brodhead*, 345 U.S. 322, where the City of Denver, Colorado, had imposed a tax on the personal property of a United States Air Force officer stationed in Colorado and living in Denver, whose residence and domicile were in Louisiana. In rejecting the contention that the city could tax the officer's personal property because there was no danger of multiple taxation since Louisiana had imposed no taxes on the personal property of its residents, the Supreme Court of the United States explained that (p. 326) —

> "though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that

> compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces."

The Supreme Court of the United States also considered the constitutionality of Section 574 in the *Dameron* case, and upheld it as being within the powers delegated to the Congress to wage war and to enact necessary and proper supplementary legislation. The Court also noted that Section 574 in no way affected the reserve powers of the states to tax, since the "statute merely states that the taxable domicile of servicemen shall not be changed by military assignments." 345 U. S., p. 325.

Indeed, the Attorney General has recognized the effect of Section 574. He has ruled that personal automobiles owned by non-resident servicemen stationed in the State of Mississippi are exempt from state, county, and municipal ad valorem taxes imposed under the Motor Vehicle Ad Valorem Tax Act, Sections 10007-04, 10007-21 (Appendix B, *infra.*) Opinion dated July 11, 1958, Biennial Report of the Attorney General of Mississippi (1957-1959), pp. 99-100 (Appendix D, *infra*).

The effect of Section 574 is, therefore, to allocate the personal property of a serviceman to his state of residence or domicile for the purposes of taxation by a state and its political subdivisions. In the instant case, Section 574 bars any state except the State of South Carolina, the state of the appellant's residence and domicile (R. 16-17), from taxing his personal property, such as his house trailer. This result is eminently fair since it obviates the problem of multiple taxation of the property of military personnel who are transferred from

taxing jurisdiction to taxing jurisdiction by military orders; while non-resident servicemen who are serving in the State of Mississippi are immune to taxation of their personal property by that state and its political subdivisions, Mississippi servicemen who are serving in other states are immune to taxation of their personal property except by the State of Mississippi and its political subdivisions.

Respondents and the Supreme Court of Mississippi have fallen into the error of considering that the second paragraph of §574 applies to this case. Petitioner submits that it does not. Paragraph (2) deals with the situation where licenses, fees or excises as to motor vehicles are involved and requires that a serviceman pay these imposts to the State of his residence before he can claim immunity from similar imposts by the State in which he is stationed. This is not so as to ad valorem taxes. There is no requirement that a serviceman pay ad valorem taxes to the State of his residence before he can claim the immunity provided by the first paragraph of §574, and this was precisely the holding of *Dameron v. Brodhead, supra.*

The purpose of the House Trailer Ad Valorem Tax Act, as stated in Section 10007-51 (Appendix B *infra*) is—with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

Another section of the House Trailer Ad Valorem Tax Act, Section 10007-57, provides that the sheriff shall use, for the purpose of assessing and collecting ad valorem

taxes on house trailers to which the Act applies, the assessed value of house trailers as set out in Chapter 588, General Laws of Mississippi (1958), the Motor Vehicle Ad Valorem Tax Act. The 1958 Act requires that "Motor vehicles be assessed uniformly according to value * * *." Section 10007-08. Another provision of the 1958 Act, Section 10007-10, directs the State Tax Commission to prepare an assessment schedule of motor vehicles, as defined in the Act, which is to be used by the tax collector in assessing, calculating, and collecting ad valorem taxes. The Commission is authorized to use any method in preparing the schedule which, in its judgment, will tend to equalize the assessed value of property in this class with property in other classes in general, including reference to the values of various makes, models, year of manufacture, and types of motor vehicles as adopted by a reputable nation-wide agency or association which regularly compiles and furnishes such information.

It is, therefore, clear that the House Trailer Ad Valorem Tax Act is concerned with the assessment and collection of ad valorem property taxes on stationary house trailers, such as the appellant's. Not only does the 1962 Act expressly deal with "ad valorem taxes" (e.g. Sections 10007-52, 10007-53, *supra*), but it also provides that the assessments are to be based upon value. The appellant's tax receipt indicates that his house trailer was valued for tax purposes at $460, that the state, county, and municipal tax rate was applied to this valuation, and that his total ad valorem taxes amounted to $36. (R. 26.) Finally, since Section 10007-53 of the 1962 Act, *supra*, requires "Any person owning, occupying, using, or having in his possession or control a house trailer" to register it and pay ad

valorem taxes on it, it is clear that the taxes in question are upon mere ownership and possession of property, whether or not the highways are used. Plainly, the taxes paid by the appellant were property taxes.

Moreover, such a direct property tax is plainly not a "license, fee, or excise" within the meaning of Section 574(2). Mississippi has elsewhere provided for licenses and fees, such as the annual highway privilege tax on house trailers which are drawn over the highways. Sections 9352-09(b) and 9352-16, 7 Mississippi Code (1942), Recompiled (1962 Cum. Supp.)

It must be concluded that the taxes which the appellant paid under protest on his house trailer were ad valorem personal property taxes, and were not licenses, fees, or excises. The proviso in Section 574(2) is inapplicable; and Section 574(1) bars the imposition of such taxes.

II.

ALTERNATIVELY, IF THE COURT SHOULD CONCLUDE THAT §574(1) DOES NOT DISPOSE OF THE CASE, AND THAT THEREFORE CONSIDERATION SHOULD BE GIVEN TO §574(2), PETITIONER SUBMITS THAT §574(2) IS INAPPLICABLE, BECAUSE A HOUSE TRAILER IS NOT A MOTOR VEHICLE.

A condition to the application of the proviso in Section 574(2) is that the license, fee, or excise in question is imposed on "motor vehicles". The appellant's house trailer, while it does have wheels, is supported by concrete blocks and is not self-propelled. (R. 17-18, 20, 35.) The Attorney General in his opinion concluded with-

out discussion that "The application [for refund] shows further that the property upon which the tax was paid is, in fact, a motor vehicle," citing the provisions of the 1962 house trailer tax act and the 1958 motor vehicle tax act. (R. 36-38 and Appendix C, *infra.*) There is no basis in either of these statutes for this conclusion.

The lack of a special definition of the words "motor vehicles" in Section 574(2) thus implies that Congress employed them in their usual and customary sense. Moreover, the absence of qualifying words or special definition is particularly important in this situation because the statute, as a whole, is carefully drafted, utilizing precise language and special definitions. The Supreme Court of the United States in *Addison v. Holly Hill Co.*, 322 U. S. 607, when faced with a similar problem of determining the meaning of common words used in a statute, noted that (pp. 617-618)—

> "the ultimate question is what has Congress commanded, when it was given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. * * * After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

Moreover, the provisions of the Soldiers' and Sailors' Civil Relief Act must be read, as the Supreme Court of the United States said in *Le Maistre v. Leffers*, 333 U. S. 1, 6, "with an eye friendly to those who dropped their affairs to answer their country's call."

Petitioner submits that the Supreme Court of Mississippi erred when it concluded that the definition of motor vehicles in other Federal statutes included house trailers. It is clear from each statute cited that "movement" is an essential element in each definition of the words "motor vehicle"; and that mere capability of being moved does not bring the object within the meaning of the definition. Thus:

A. In 40 U.S.C. 472(1) (this is the federal statute pertaining to management of Government property) the term "motor vehicle" is defined to include any vehicle self-propelled or drawn, but the definition goes on to state that the vehicle must be "designed and operated principally for highway transportation."

B. In 49 U.S.C. 303 (this is the statute dealing with motor carriers in interstate commerce), the term "motor vehicle" is defined to include a trailer, but the definition goes on to make clear that it must be "propelled or drawn by a mechanical power and used upon the highways".

C. In 18 U.S.C. 31 (this statute deals with destruction of aircraft and motor vehicles), the term "motor vehicle" specifically provides that the object must be "propelled or drawn on the highways in the transportation of passengers and property".

Perhaps a better example to illustrate that movement on highways is intended by Congress whenever it used the term "motor vehicle" is 18 U.S.C. 2311 (Interstate transportation of stolen property), which defines the term "motor vehicle" among other things as "any

other self-propelled vehicle designed for running on land."

It is submitted, therefore, that the Supreme Court of Mississippi erred when it concluded that those federal statutes which are in pari materia impel the conclusion that the term "motor vehicle" whenever used by Congress includes a house trailer which has not, as in this case, been moved over the highways at all during the taxable period.

III.

ALTERNATIVELY, IF A HOUSE TRAILER IS A MOTOR VEHICLE WITHIN THE MEANING OF §574(2) THEN THE PROVISO OF THIS SECOND PARAGRAPH DOES NOT APPLY BECAUSE THE STATE OF SOUTH CAROLINA, WHICH IS PETITIONER'S DOMICILE, REQUIRES NO PAYMENT OF TAX OF ANY SORT UNLESS THE VEHICLE OPERATES OR MOVES ON THE HIGHWAYS OF SOUTH CAROLINA.

A further condition to the application of the proviso in Section 574(2) is that the serviceman has failed to pay licenses, fees, or excises imposed on his motor vehicle by the state of his residence or domicile. The fact that the appellant is a resident and domiciliary of the State of South Carolina (R. 16-17) has been accepted without question by the Attorney General (R. 37). It is also clear that the appellant has never registered his house trailer, or paid any taxes on it to the State of South Carolina or to any other state. (R. 17, 31.) However, the Attorney General found that South Carolina required each house trailer to be registered and licensed, and a registration fee paid on it, that the

appellant had failed to pay, and that under Section 574(2) he was therefore not covered by the exemption and was liable for the tax paid. (R. 37, 38.) The Chancellor agreed with this conclusion, relying on the opinion of the Attorney General and the authorities referred to there, and, in addition, on Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) (Appendix B, *infra*). R. 42.

The Supreme Court of Mississippi erroneously concluded that the proviso of §574(2) required that petitioner *register* his house trailer with South Carolina authorities before he could claim immunity from the Mississippi ad valorem tax. However, §574(2) does not deal with registration at all, but with *payment* of "licenses, fees or excises" — *when required*. But under the facts of this case South Carolina did not require the payment of any fees, licenses or excises.

Under South Carolina law, "Every * * * trailer * * * operated or moved upon a highway in this State shall be registered and licensed * * * 10 Code of Laws of South Carolina (1962), Sec. 46-11 (Appendix B, *infra*). The annual license fee for such a house trailer is $6. Section 46-35.3, 10 Code of Laws of South Carolina (1962) (Appendix B, *infra*). Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) states that "Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling purposes," the owner shall obtain a license from the county. The annual license fee under this provision is $2. Section 46-100.2, 10 Code of Laws of South Carolina (1962) (1962 Supp.) (Appendix B, *infra*). However, a house trailer which is licensed by the South Carolina

State Highway Department under Section 46-11 is exempted from the registration requirement of Section 46-100. Section 46-100.4, 10 Code of Laws of South Carolina (1962) (1962 Cum. Supp.) (Appendix B, *infra*).

By means of the statutory provisions outlined above the State of South Carolina has dealt with two groups of house trailers—(1) those "operated or moved upon a highway" in South Carolina, and (2) those brought into South Carolina or purchased in that state which are not used on the highways. However, the house trailer of the appellant was purchased in the State of Mississippi and has never been out of this state. (R. 31.) Since it has never been taken into the State of South Carolina and has never been moved or drawn over the highways of that state, it is not covered by the license, fee, or excise requirements established by the State of South Carolina. The appellant, therefore, has not failed to pay any licenses, fees, or excise imposed on his house trailer by South Carolina because that state has not established any such requirements for house trailers such as the appellant's.

The fact that the State of South Carolina has not imposed licenses, fees, or excises on house trailers such as the appellant's is not an authorization to the State of Mississippi to do so. In *Dameron v. Brodhead*, 345, U. S. 322, the Supreme Court of the United States considered that very question and rejected the contention that a taxing jurisdiction could step into the void resulting from the non-action by the state of residence or domicile. The Court held that Section 574 forbade the collection of a personal property tax when the state of the taxpayer's residence and domicile

had levied none, noting that the statute plainly provided that (p. 326)—

> " 'personal property shall not be deemed to be located or present in or to have a situs for taxation' in the state of temporary presence in any case. There is no suggestion that the state of original residence must have imposed a property tax. Since the language of the section does not establish a condition to its application, we would not be justified in doing so."

It must be concluded that since South Carolina has imposed no license, fee, or excise on the appellant's house trailer, he did not, within the meaning of the proviso in Section 574(2), fail to pay "the license, fee, or excise required by the State * * * of which the person is a resident" or a domiciliary. Section 574(1), therefore, is applicable to bar the taxes in question.

CONCLUSION

In the light of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

HUBERT, BALDWIN &
ZIBILICH
300 Oil & Gas Building
1100 Tulane Avenue
New Orleans, Louisiana

By:_____

CERTIFICATE

I hereby certify that a copy of this petition has been mailed to the Honorable Joe T. Patterson, Attorney General of the State of Mississippi, Counsel of Record in this case, addressed to him at his public office in Jackson, Mississippi.

Leon D. Hubert, Jr.

APPENDIX A

Sgt. Jesse E. SNAPP

v.

Honorable W. D. NEAL, State Auditor of Public Accounts, State of Mississippi, and Honorable Joe T. Patterson, Attorney General of the State of Mississippi.

No. 43086

Supreme Court of Mississippi.

June 1, 1964.

BRADY, Justice.

This is an appeal by Sgt. Jesse E. Snapp under and by virtue of Section 1147, Mississippi Code of 1942, recompiled, from the final order and decree of the Chancery Court of Copiah County, Mississippi, filed August 14, 1963. The notice of appeal was filed on November 1, 1963. The appellant, under Sec. 9979, Vol. 7A Miss. Code of 1942, instituted the proceedings below to review the disapproval by the State Auditor of Public Accounts and the Attorney General of the State of Mississippi of his application for refund of taxes paid by him on his house trailer. On December 28, 1962, the appellant paid to the Sheriff and Tax Collector of Copiah County, Mississippi, under protest, the exiguous sum of $38.50 in payment of the assessment and levy made on his house trailer under House Bill No. 747, Chap. 535, General Laws of Mississippi (1962). The appellant filed an ap-

plication for a refund, and on April 4, 1963, the attorney general disapproved it. The state auditor gave notice of the denial of his application on April 5, 1963. On June 26, 1963, the appellant filed a petition for appeal and review of the denial of his application for refund in the Chancery Court of Copiah County, Mississippi. On August 13, 1963, the chancellor entered a final order decreeing that the action of the attorney general in disapproving the application be affirmed for the reasons set forth in the opinion of the attorney general in entering judgment against the appellant for costs. From this decree the appellant has appealed to this Court.

The record discloses the following facts:

Since the re-entry of the appellant on October 29, 1951, into the military service, he has been a resident and domiciliary of Pacolet, South Carolina; he is a registered voter there and his relatives are residents of and are domiciled in South Carolina, and he intends to return to South Carolina on completing his military service. On May 16, 1959, the appellant purchased a house trailer in Greenville, Mississippi. This trailer was moved outside of the city of Greenville, Mississippi, and the appellant resided in this trailer until October, 1961. On October 28, 1961, he became an active member of the United States Air Force and was stationed at Crystal Springs, Mississippi. He was assigned as a permanent party, subject to duty elsewhere. His presence in Mississippi is simply in compliance with his military orders. Since before November 1, 1962, he has lived in his house trailer out from Crystal Springs, Mississippi, at the Sojourner Trailer Court, where he was transferred, as stated, from

Greenville, by the Transit Homes, Inc. This trailer was moved over the Mississippi highways and the trailer was parked out from Crystal Springs on privately owned property. The trailer is connected with water, sewerage and electricity, which are detachable. It is now resting on concrete blocks but has wheels and it can be moved over the highways but is not self-propelled. This trailer was not registered on November 1, 1962, under the laws of South Carolina or under the laws of any other state, and no taxes have been paid to South Carolina or to any other state for any period beginning on or after November 1, 1962. On December 15, 1962, the Sheriff of Copiah County notified appellant that there had been an assessment and levy of taxes on his house trailer under the House Trailer Ad Valorem Tax Act which were due on or before November 1, 1962, and that the house trailer would be sold if payment was not made by January 1, 1963. On December 28, 1962, as a result of this notice and under protest, appellant paid the sum of $38.50. On February 4, 1963, an application for a refund of the tax paid and interest was made. On April 5, 1963, the application for the refund of the tax was denied by the attorney general by proper notice, and notice was also given by the state auditor, W. D. Neal, that the application had been denied. On June 26, 1963, petition to review the disallowance of refund was filed in the Chancery Court of Copiah County, Mississippi. On June 28, 1963, the chancellor ordered the state auditor to transmit to the court a certified copy of the record, which was done. On August 13, 1963, after examining the record and hearing oral arguments of counsel, the chancellor entered the final order affirming the action of the attorney general and disapproving appellant's application for

refund and entering a judgment against the appellant for costs. It is from this decree and order that this appeal is prosecuted to this Court.

The basic issue presented by this appeal is whether the chancellor erred in holding that the ad valorem taxes imposed on appellant's house trailer were not barred by Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. This question necessarily involves other related questions which will be taken up in appropriate order.

(I) It is the argument of the appellant that under Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, the situs for taxation of the personal property of a nonresident serviceman is in his state of residence or domicile. Dameron v. Brodhead, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041; United States v. Arlington County, Commonwealth of Virginia, 326 F.2d 929 (C.A. 4th); Biennial Report of the Attorney General of Mississippi (1957-1959), pp. 99-100; H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H.Rep. No. 1514, 78th Cong., 2d Sess., p. 2.

(II) The appellant further contends that the proviso in Section 574(2) is inapplicable because the taxes levied upon the house trailer of the appellant were ad valorem personal property taxes, not motor vehicle licenses, fees, or excises.

(III) The appellant further contends that the proviso in Section 574(2) is inapplicable because the appellant did not fail to pay the motor vehicle licenses, fees, or excises levied on his house trailer by his state of residence, or domicile, since South Caro-

lina had not imposed any such license, fee, or excise on his house trailer.

(IV) The appellant urges that the proviso in Section 574(2) is inapplicable because the appellant's house trailer was not a motor vehicle as that term is used in Section 574(2).

In order to resolve the basic questions in issue, it is necessary that we review that portion of 50 U.S. Code App. § 574, which has application, and which is as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, * * * by any State, * * * such person shall not be deemed (a) to have lost a residence or domicile in any State, * * * solely by reason of being absent therefrom in compliance with military or naval orders, or (b) to have acquired a residence or domicile in * * * any other State, * * * while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, * * * of any such person by any State, * * * of which such person is not a resident or in which he is not domiciled, * * * *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State*, * * * (Parenthesis (a) and (b) ours.)

"(2) When used in this section, (a) the term 'personal property' shall include *tangible* and *intangible property* (including *motor vehicles)*, and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *PROVIDED, That the license, fee,*

*or excise required by the State, * * * of which the person is a resident or in which he is domiciled has been paid.*" (Italics ours.)

[1] It can be conceded, we think, that Section 574 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, bars the imposition by any state and its political subdivisions of ad valorem personal property taxes on personal property owned by a nonresident serviceman. It should be noted, also, however, that there is an exception to this general prohibition and that the federal statute in question does not grant a complete exemption from taxation, but it does create a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where he is in fact physically located as regards all other items of personal property, except motor vehicles. The legal fiction thus created is a bar to taxation by another state other than the state of the domicile of the serviceman, which was set forth in Dameron v. Brodhead, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041. It is to be noted, however, that the exception in the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid certain taxes in the state in which he is a resident or is domiciled. The exact language is:

"PROVIDED, That the license, fee, or excise required by the State, * * * of which the person is a resident or in which he is domiciled *has been paid.* * * * " (Italics ours.)

[2] The appellant contends that provision (2) of

Sec. 574 is inapplicable because appellant's house trailer was not a motor vehicle as that term is construed and used in provision (2) of Sec. 574. It is to be noted that Congress did not undertake to define motor vehicle when it enacted 50 U.S.C.A.App. § 574. Therefore, it should follow that it is logical to apply the definition of the words as used in other federal statutes, to-wit: Title 40 U.S.C.A. 472*(l)* quotes:

"The term 'motor vehicle' means any vehicle, self-propelled *or drawn by mechanical power,* * * *." (Italics ours.)

Title 49 U.S.C.A. § 303 (a) (13) reads as follows:

"The term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semi-trailer propelled *or drawn by mechanical power* and used upon the highways in the transportation of passengers or property, * * *." (Italics ours.)

In 18 U.S.C.A. § 31, we find this definition:

" 'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes * * * in the transportation of passengers, or passengers and property; * * *."

[3] Since 50 U.S.C.A.App. § 574, does not attempt to define the meaning of "motor vehicle", any one of these federal statutes can be used to supply the definition of "house trailer" as being included within the words "motor vehicle", and thus clearly refutes the narrow dictionary definition limiting "motor

vehicles" to those that are self-propelled, as urged by the appellant. Mathison v. Brister, 166 Miss. 67, 145 So. 358. Our own statutes, which have definitions relating to motor vehicles, leave no doubt that this definition does include "house trailers". Mississippi's definitions are also controlling upon the courts of the United States by reason of the provisions of 28 U.S.C.A. § 1652, which is as follows:

"The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

Therefore, since the Act of Congress, 50 U.S.C.A. App. § 574, does not provide a definition for "motor vehicles", the Mississippi definition of the words to include "house trailers" is conclusive and binding upon both this Court and the federal courts. Furthermore, Sec. 3 of Chap. 588, Laws of 1958, the definition section, appearing as Sec. 10007-03 Miss. Code of 1942, Rec., provides in part:

"The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

"(a) The term *'motor vehicle' shall mean any device* and attachments supported by one or more wheels *which is propelled or drawn by any power,* other than muscular power, over the highways, streets, or alleys of this state." (Italics ours).

Sec. 2, Chap. 535 of the Laws of 1962, the definition

section, appearing as Sec. 10007-52, Miss. Code of 1942, Rec., provides in part:

"The subject words and terms ot this section, for the purposes of this act, shall have meanings as follows:

"(a) The term 'house trailer' shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power *not its own,* and which house trailer is not taxed under authority of chapter 588, laws of 1958." (Italics ours.)

[4-6] The appellant concedes that the house trailer is included within the above definition which is pari materia with chapter 588, supra, which by definition also includes his house trailer. It is to be noted that notwithstanding the inclusion of his house trailer within the terms of both the statutes quoted above, appellant has not registered the house trailer or paid any tax thereon during the period of his ownership of the trailer, although it has been drawn along the highways of this state whenever the need arose and is readily capable of being drawn along the highways of this state whenever the need arises again, or whenever the appellant desires to do so. We think, therefore, that the fourth contention of the appellant, that his house trailer was not a motor vehicle as that term is used in Sec. 574(2), is not well taken, nor do we believe that his third contention, that Sec. 574(2) is inapplicable be-

cause the appellant did not fail to pay the motor vehicle license fees and excises levied on his house trailer by his state of residence or domicile since South Carolina had not imposed any such license fee, or excise on his house trailer. The invalidity of contentions (II) and (I) will be hereinafter shown. We assert that it is clear that this section of the act contemplates that the personal property, which is exempt provided a license fee or excise is paid to the state in which the appellant resides, will be located in said state or that said state will have such jurisdiction or control over the trailer or motor vehicle that the license, fee or tax or excise which is due and owing will be paid. It can scarcely be conceded that a legal fiction can give a state the right to tax nonexistent property, that is, property which has never been within the jurisdiction of the state. In order for a state to require the payment of a license or fee or excise on property, the property must be located in the state, or must have been used in the state, and must have become subject to the operation of the state laws involved. The appellant's house trailer here has never been out of the state of Mississippi. It was purchased in this state, has remained in this state, traveled the highways of this state, and has never been in the state of South Carolina. While South Carolina does not require a license fee or excise on his house trailer, still the second paragraph of Sec. 574 of Title 50 U.S.C.A.App., clearly stipulates that the legal fiction created in the first paragraph will not and shall not apply to motor vehicles *unless the serviceman has in fact paid the license fee or excise required by the state in which he is domiciled.* This exception to the blanket immunity granted in the first paragraph shows that the clear and unmistakable congressional intent was that the motor vehicles

of servicemen should be registered according to the laws of the state of his residence, or of some state, regardless of where they may be located, and this is true even though perhaps a license, fee or excise on the trailer is not required by that state. It does not excuse the serviceman from registering the trailer in his home state. Code of South Carolina of 1962, Sec.46-2 (13) provides as follows:

"(13) 'TRAILER:' Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle; * * *."

Sec. 46-11 provides:

"Vehicles Required to be Registered and Licensed. — Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State *shall be registered and licensed in accordance with the provisions of this chapter.* It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter." (Italics ours.)

Section 46-35.3 provides:

"Fees for house trailers. — For every house trailer, the annual fee shall be six dollars. The Department shall classify as a 'house trailer' every trailer or semi-

trailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in §§ 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to §§ 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip."

It is apparent, therefore, that the state wherein appellant claims to be domiciled, namely, South Carolina, does, in fact, require the registration of the house trailer as a motor vehicle. Assuming the operation of the legal fiction, then this requirement of the laws of South Carolina has not been complied with in any way by the appellant. Appellant further admits that the statutes quoted above require the registration of his house trailer in South Carolina if it, in fact, was physically located in the state. He asserts that the statutes of the state in which he is domiciled do not apply because the house trailer was, in fact, located in Mississippi during the entire taxing period, and then paradoxically he seeks to have this Court void the collection of the tax by Mississippi because the provisions of 50 U.S.C.A.App. § 574, provide that the legal status

of the house trailer for tax purposes is in South Carolina. It is the reasoning which was urged in the case of Whiting v. City of Portsmouth, 202 Va. 609, 118 S.E.2d 505, wherein the Supreme Court of Virginia rejected this theory. Accordingly, this theory is rejected by this Court.

[7] In passing, all the appellant had to do to avoid the tax in question in Mississippi was to register his motor vehicle in Mississippi under the laws specifically granting him the tax exemption. This the appellant neglected or refused to do. Chapter 588, Laws of 1958, was passed by the Mississippi Legislature to implement the amendment of Section 112 to the Mississippi Constitution of 1890, and to thereby provide a special method of assessment and collection of taxes on motor vehicles. In recognition of the federal statutes, Sec. 574, supra, and the legal fiction created thereby, the legislature in enacting Chap. 588, supra, provided in Sec. 21 thereof, that:

"Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

Upon proper inquiry the office of the appellee, the Attorney General, held on July 11, 1958, that such vehicles were not liable for ad valorem taxes provided they were registered in this state. The opinion is published in the biennial report of the Attorney General of Mississippi, 1957-1959, on pages 99 and 100, and provides as follows:

"TAXES — EXEMPTIONS: Members of the armed forces are not liable for ad valorem taxes on personally owned automobiles not used in business.

"By: McLendon, Assistant

"July 11, 1958

"This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

"Section 574, Title 50 U.S.C.A. provides that when a member of the armed forces is in any state in compliance with military or naval orders his '* * * personal property shall not be deemed to be located or present in or to have status for taxes in such state * * *' Sec. 21 of H. B. No. 3, of the Regular Session of 1958, provides 'Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.'

"It is, therefore, the opinion of this office that members of the armed forces of the United States who are non-residents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by H. B. No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, pro-

vided the automobile in question is not used in any way for a trade or business."

[8] The appellant, therefore, notwithstanding the specific requirements of the federal act that motor vehicles be registered in the state of the domicile of the serviceman in order to be entitled to tax immunity and the specific provisions of the law of South Carolina that the house trailer be registered in that state, appellant proceeded to operate the house trailer on the highways of Mississippi whenever the need arose. He, also, failed and refused to register his house trailer under the Mississippi act specifically granting to him an ad valorem tax exemption, and which such registration would have specifically granted to him an exemption from the tax paid in this case, Sec. 10007-58(a), Miss.Code of 1942, Rec.

We feel, therefore, that this appellant has deliberately avoided or more properly has waived any and all claims to tax immunity that he might have heretofore enjoyed. This is, of course, an ad valorem tax, the statute so provides it, and makes the payment of the ad valorem tax a condition precedent to the registration of the motor vehicle. This the appellant could have avoided had he complied with the laws of the state of South Carolina, the laws of the state of Mississippi, and the federal laws pertaining thereto. Section 574 of 50 U.S.C.A.App. does not prohibit the levy of an ad valorem tax on motor vehicles unless the serviceman claiming the tax immunity has complied with the laws of the state of his domicile. This the appellant has clearly failed to do. The second paragraph of Sec. 574 provides specifically:

"* * * (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: PROVIDED, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

[9] By stipulating expressly that the taxation should not be limited to privilege and excise taxes, it necessarily follows that the prohibited tax must include the only other general branch of taxation, that is, ad valorem. It is emphasized that the federal statute is meant to include ad valorem taxes as being one of the taxes for which the serviceman is *immune, provided he complies with the laws of his home state concerning registration of the motor vehicle.* If he fails to so comply, as was done in this case at bar, he is no longer entitled to protection of the Act of Congress. The failure of the appellant here to comply with the federal law, the law of his home state of South Carolina, or the law of the state of Mississippi in which he has been residing for the past several years, granting him an ad valorem tax exemption, we feel that by his acts in this regard he has waived his right or claim of any nature which he may have had insofar as exemption from taxation is concerned.

"One who claims exemption from taxation has the burden to show that all the conditions on which the exemption was based have been at all times fulfilled." Yazoo & M. V. Railroad Co. v. Adams, 81 Miss. 90, 32 So. 937.

"* * * one claiming exemption from taxation has the

burden of showing that the claim comes clearly within the exemption law, unaffected by other statutes which clearly renders the property subject to a lien for the assessment * * *." Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So.2d 498.

"* * * when anyone is claiming the benefit of an exception under a statute, the proof must be clear that the one claiming the benefit of an exception comes clearly within the same." Trunkline Gas Co. v. Mississippi State Tax Commission, 238 Miss. 591, 119 So.2d 378.

"Exemptions from taxation are strictly construed, and never presumed, and person claiming exemption had burden to establish his right thereto." Jackson Fertilizer Co. v. Stone, 173 Miss. 183, 162 So. 170.

In 84 C.J.S. Taxation, § 224, p. 431, we find:

"One entitled to the benefit of a grant of exemption must in some way manifest his acceptance of the grant, in order to obtain immunity under it, and in particular must comply with all valid and reasonable conditions imposed by statute; and the same rule applies to a statute commuting taxes or providing for the payment of a gross-earnings tax or other special tax in lieu of general taxation. Such conditions include the planting of forest trees on the exempted land, or the making of a list or return of one's property to the assessors, or the filing of an affidavit, such as an affidavit with respect to the value of the property for which an exemption is claimed."

Section 225 of the same work provides:

"Since taxation is the rule and exemption is the exception, and since exemptions from taxation are not favored, the general rule is that a grant of exemption from taxation is never presumed. On the contrary, since the relinquishment of the power to tax is never presumed, * * * the presumption is against exemption from taxation, and in all cases of doubt as to the legislative intention, or as to the inclusion of particular property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on claimant to prove or establish clearly his right to the exemption, bringing himself clearly within the terms of such conditions as the statute may impose. Accordingly, one claiming in any form of action or proceeding that his property is exempt from taxation must offer in proof facts and circumstances in support of his claim."

Appellant has obviously made no attempt to comply with the federal act granting him a right to tax exemption by registering his house trailer in the state in which he claims he is domiciled. In fact, to the opposite, he argues in this case that such registration by his state is not required. It is obvious, also, that he has failed to take advantage of the opportunity to register the house trailer in Mississippi under statutes specifically granting to him an ad valorem tax exemption, and he bases and predicates his failure to do so on the ground that such registration was not required because the house trailer was not drawn along the highways. This argument is of no merit because of the undisputed facts, admitted by the appellant through his attorney, that the house trailer has been drawn over

the highways of this state. It appears, therefore, that paragraph (1) of Sec. 574, insofar as the situs for taxation of personal property of a nonresident serviceman being in his state of residence or domicile is concerned, is not involved in the case at bar, since the case at bar is involved under provision (2) of Sec. 574, which is the exception to the general rule and which requires that the serviceman comply with the conditions of Sec. (2) before exemption from taxation is permissible in a state other than the state of his domicile.

[10] In conclusion, the state of Missisippi has a right, recognized by Congress, to require the registration of all motor vehicles that use, or are capable of using, the public highways of this state. This authority does not abridge the rights of citizens to equal protection granted by the Fourteenth Amendment to the United States Constitution. Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222; Hendrick v. Maryland, 235 U.S. 610, 35 S.Ct. 140, 59 L. Ed. 385; Blashfield, Cyclopedia of Automobiles & Practice, Vol 1, pp. 470-473; Roberts v. Federal Land Bank of New Orleans, 189 Miss. 898, 196 So. 763; State v. Lawrence, 108 Miss. 291, 66 So. 745, Ann. Cas.1917E, 322; Title 50 U.S.C.A. App. § 574.

[11] The registration of motor vehicles by the owners thereof is one of the most important safeguards which a state can have in operating its internal affairs and in maintaining peace and order. We do not believe that Congress intended by enactment or extension of the Soldiers' and Sailors' Civil Relief Act of 1940 to rob the states of their right to require registration of motor vehicles or to abolish the taxation thereof, which

will happen here if the appellant's contention is to prevail. The act does not grant unto the appellant immunity from all taxation or make him, because of his military service connection, a tax untouchable, which is substantially what the appellant claims. It is evident that the intention of the Congress in extending the life of the Soldiers' and Sailors' Relief Act of 1940 was not to exempt members of the armed services from all motor registration and taxation laws, giving them federal esoteric immunity from these taxes reserved to the states, but to prevent multiplicity of tax assessments against the soliders and sailors by the states into which they are required to reside, or duplicity of tax payments. Having failed to avail himself of the exemption granted by the federal statutes, or the statutes of the state of South Carolina or the state of Mississippi, it follows that the learned chancellor was correct in holding that the appellant was liable for the tax on his house trailer, and the decree of the Chancery Court of Copiah County denying the application of the appellant for a tax refund is affirmed.

Affirmed.

KYLE, P. J., and ETHRIDGE, RODGERS and PATTERSON, JJ., concur.

APPENDIX B

1. *Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:*

SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, C. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P. L. 87-771, 76 Stat. 768].

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such persons by any State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall

not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided,* that nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided,* That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

(50 U.S.C. Appendix 1958 ed., Sec. 574.)

2. *7A Mississippi Code 1942, Recompiled:*

§ 9883. *Ad valorem tax—municipal general levy.—*

Municipalities may levy taxes in an amount not exceeding fifteen (15) mills on the dollar of the assessed valuation of all taxable property within such municipality for general revenue purposes and for general improvements. Provided, however, the governing authorities of any municipality may make additional levies for special purposes as authorized by law, provided the aggregate of all such special levies does not exceed the limitation prescribed therefor by law.

* * * *

3. *7A Mississippi Code 1942, Recompiled (1962 Cum. Supp.):*

§ 9877. *State ad valorem tax levy.*

A state ad valorem tax of four (4) mills on the dollar for the year 1958 and for each year thereafter is hereby levied on all taxable property in the State of Mississippi.

* * * *

§ 9879. *Ad valorem taxes—general county levy.*

(1) The board of supervisors of any county is hereby empowered to levy ad valorem taxes on taxable property in the respective counties in any one year, as shown by the assessment roll containing assessments of property made as of January first of the year, and the assessment of motor vehicles as made according to the provisions of the "Motor Vehicle Ad Valorem Tax Act of 1958" [§§ 10007-01 et seq.], for all general county purposes, exclusive only of levies for roads

and bridges and schools, at the rate herein specified, but not in excess of the following amounts or rates:

* * * *

4. *Motor Vehicle Ad Valorem Tax Act of 1958, c. 588, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-03. *Definitions.*

The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state.

* * * *

§ 10007-04. *Who is liable for tax—time of payment—due date.*

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license,

* * * *

§ 10007-21. *Exemptions and credits—penalty for violation of section.*

* * * *

Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.

* * * *

5. *House Trailer Ad Valorem Tax Act, Laws 1962, c. 535, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-51. *Purpose of Act.*

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

§ 10007-52. *Definitions.*

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and

which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§ 10007-01 et seq.]

(b) The term "person" shall mean any natural person, agency, firm, copartnership, corporation, joint stock, or other association or organization.

§ 10007-53. *Registration fee report and payment—proration of tax.*

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50c) of this fee shall be retained by the sheriff, one dollar ($1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

* * * *

§ 10007-58. *Exemptions.*

(a) House trailers which are already taxed under authority of chapter 588, laws of 1958 [§§ 10007-01 et

seq.], are exempt from the taxes authorized by this act.

(b) If any vehicle defined in this act is used or is to be used upon the streets and highways of this state after the tax, as set out in this act, has been paid, then the sheriff shall exempt such vehicle from further ad valorem taxes for the remaining portion of the current fiscal year in issuing a road and bridge privilege license for such vehicle.

* * * *

6. *10 Code of Laws of South Carolina 1962:*

§ 46-2. *Definitions of words and phrases* — The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, to wit:

(1) "*Vehicle:*" Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks;

* * * *

(13) "*Trailer:*" Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle;

§ 46-11. *Vehicles required to be registered and licensed.*—Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter. (1952 Code § 46-11; 1949 (46) 342.)

§ 46-35.3. *Fees for house trailers.*—For every house trailer, the annual fee shall be six dollars. The Department shall classify as a "*house trailer*" every trailer or semitrailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in §§ 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to §§ 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip. (1952 Code § 46-35; 1949 (46) 342; 1959 (51) 391.)

7. *10 Code of Laws of South Carolina 1962 (1962 Supp.):*

§ 46-100. *Mobile homes and house trailers to be licensed.*—Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling purposes, the owner shall obtain a license from the governing body of the county or its designated agent. (1962 (52) 2181.)

§ 46-100.1. *Not to be licensed unless taxes paid.*—No mobile home or house trailer, except those owned or stocked by dealers for resale, may be registered and licensed unless a signed statement accompanies the application certifying that all county and municipal taxes legally due by the applicant during the preceding year have been paid, if such mobile home or house trailer were subject to any such tax. A transfer between members of the same family shall not, for the purpose of this article, be considered a bona fide purchase. (1962 (52) 2181.)

§ 46-100.2. *Period of license; form; fee.*—The license required under the provisions of this article shall be good for a period of one year beginning on the first day of each year. Licenses issued between July first and December thirty-first shall be issued for one half the annual rate. The license shall be of such form as shall be prescribed by the Tax Commission and shall be displayed on the mobile home or house trailer so as to be clearly and readily visible from the outside. The annual license fee shall be two dollars. (1962 (52) 2181.)

§ 46-100.4. *Article not applicable if trailer licensed by Department.*—The provisions of this article shall not be applicable if the mobile home or house trailer is licensed by the Department. (1962 (52) 2181.)

APPENDIX C

The opinion of the Attorney General of the State of Mississippi in this case is as follows (R. 36-38):

[Formal parts omitted]
April 4, 1963

Mr. W. D. Neal
State Auditor of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Application for tax refund of Sgt. Jesse E. Snapp, Box 539, Crystal Springs, Mississippi

Dear Mr. Neal:

The above-styled application for tax refund is based upon an alleged exemption granted by *50 USC App.* 574. The provisions of that federal statute deemed pertinent to this application provide as follows:

[Section 514 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, is omitted.]

It will be noted that the federal statute in question does not grant an exemption from taxation, but it creates a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where it is, in fact, physically located. As regards all other items of personal property, except motor vehicles, the legal fic-

tion thus created is a bar to taxation by a state other than the state of the domicile of the serviceman. *Dameron vs. Brodhead,* 345 U. S. 322, 97 L. ed. 1041.

However, the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid taxes in the state in which he is a resident or domiciled.

This application shows conslusively that no taxes have been paid on this house trailer in any state other than the taxes for which this application for refund is made. The application shows further that the property upon which the tax was paid is, in fact, a motor vehicle. *Chapter* 535 (H.B. #747), *Laws of* 1962 and *Chapter* 588, *Laws of* 1958.

The State of South Carolina wherein the applicant is domiciled requires that each trailer, including "house trailers," shall be registered, licensed and a registration fee paid thereon. *Sections* 46-2 (13), 46-11 and 46-35.3, *Code of Laws of South Carolina* 1962.

The application shows further that the applicant has failed and refused to register his house trailer under the provisions of *Chapter* 588, *Laws of* 1958, which said statute grants to him an exemption from the payment of ad valorem taxes because of the legal fiction created by 50 *USC App.* 574. Biennial Report of the Attorney General of the State of Mississippi 1957-59, page 99, a copy of which is attached hereto.

From the foregoing, it is the opinion of this office that the taxpayer was and is liable for the tax paid. Which

said payment was made by his own election not to register his motor vehicle in the state of his domicile thereby failing to bring himself within the provisions of the federal statute, or by avoiding the tax by registering his motor vehicle under a statute of this state under which the payment of the taxes is not required. *Whiting vs. City of Portsmouth*, 202 Va. 609, 118 SE 2d 505, supports this view.

It follows that this application for refund should be and the same is hereby disapproved.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL
By Martin R. McLendon
Assistant Attorney General

APPENDIX D

Opinion of the Attorney General of the State of Mississippi, dated July 11, 1958, Biennial Report of the Attorney General of Mississippi, 1957-1959, pp. 99-100, is as follows:

This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

Section 574, Title 50, USCA, provides that when a member of the armed forces is in any state in compli-

ance with military or naval orders his ". . .personal property shall not be deemed to be located or present in or to have status for taxes in such state . . ." Section 21 of House Bill No. 3, of the Regular Session of 1958 [Section 10007-21 (Appendix B4, *supra*)], provides "Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by House Bill No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business.